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THE HONORABLE JOHN E. BRIDGES
Noted for Hearing: May 23, 2005, 8:30 a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

Timothy Borders et al.,

 Petitioners,

 v.

King County et al.,

 Respondents,

and

Washington State Democratic Central
Committee,

 Intervenor-Respondent.

NO. 05-2-00027-3

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE'S MOTION
TO SHORTEN TIME FOR MOTION TO
CLARIFY THAT A "CONVICTED
FELONY RECORD" ALONE IS NOT
SUFFICIENT PROOF OF A FELONY
CONVICTION AND TO REQUIRE
BEST EVIDENCE OF A FELONY
CONVICTION

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I. RELIEF REQUESTED

The Washington State Democratic Central Committee ("WSDCC") hereby moves this Court for an order shortening time for the consideration of its Motion to Clarify that a "Convicted Felony Record" Alone is Not Sufficient Proof of a Felony Conviction and to Require Best Evidence of a Felony Conviction. WSDCC requests that this motion be heard on May 23, 2005, at 8:30 a.m., prior to the start of trial.

Title of underlying motion:	Motion to Clarify that a "Convicted Felony Record" Alone is Not Sufficient Proof of a Felony Conviction and to Require Best Evidence of a Felony Conviction
Moving party:	Washington State Democratic Central Committee
If motion to shorten time is not granted, underlying motion would be noted for the Court's calendar for:	Wednesday, May 25, 2005
Date when moving party seeks to have the Court rule on Motion to Shorten Time:	Monday, May 23, 2005 at 8:30 a.m.
Date on which moving party seeks to have the Court consider merits of underlying motion:	Monday, May 23, 2005, at 8:30 a.m.

II. FACTUAL BACKGROUND

In the course of preparing for trial in this matter, WSDCC has been diligently reviewing and analyzing documents produced by Petitioners in support of their allegations that felons voted illegally in the 2004 General Election. In doing so, WSDCC determined that for 200 such individuals, the only documents related to the allegedly illegal voters' felony convictions are "Convicted Felon Reports" ("CFRs"), which list the information with which an individual was charged, but do not list the crime of which an individual was ultimately convicted, or whether that conviction was for a felony or a misdemeanor. *See*

1 Declaration of William C. Rava In Support of Washington State Democratic Central
2 Committee's Motion to Shorten Time for Motion to Clarify ("Rava Decl.") ¶ 2. Upon
3 discovering that Petitioners appeared to be using CFRs alone as evidence of felony
4 convictions, instead of copies of the underlying judgments, counsel for WSDCC
5 immediately contacted counsel for Petitioners on Monday, May 16 to determine whether in
6 fact this was Petitioners' intent. *Id.* ¶ 3, Ex. A. In response, counsel for Petitioners stated his
7 belief that CFRs were "reports generated by the Superior Court showing the date & nature of
8 convictions." *Id.* ¶ 4, Ex. A

9
10 Counsel for the WSDCC attempted to resolve this issue without involving the Court,
11 by informing Petitioners' counsel that CFRs do not list criminal convictions; counsel also
12 provided an example of a CFR that listed felony charges for which the individual was only
13 convicted of a gross misdemeanor. *Id.* ¶ 5, Exs. A-B.

14
15 The following day, counsel for WSDCC emailed counsel for Petitioners, requesting
16 Petitioners' position on the issue of the CFRs. Counsel for Petitioners responded: "I believe
17 we will have to leave that one for the judge." *Id.* ¶ 6, Ex. A.

18
19 As such, for seven days prior to the proposed hearing date, Petitioners have been
20 aware that WSDCC would contend that CFRs alone are insufficient proof of felony
21 convictions, and six days before the trial Petitioners agreed that this was an issue that must
22 be decided by the Court. Petitioners have had ample time (more than is allowed under the
23 ordinary briefing schedule) to prepare a complete response to WSDCC's Motion prior to a
24 May 23, 2005 hearing date.

25
26 WSDCC filed its Motion to Clarify that a "Convicted Felony Record" Alone is Not
27 Sufficient Proof of a Felony Conviction and to Require Best Evidence of a Felony
28 Conviction ("Motion to Clarify") in a timely fashion, given their immediate notification of
29

1 this issue to Petitioners and their attempts to resolve this issue with Petitioners outside of the
2 courtroom. Further, given that this issue directly impacts the level of proof required for
3 Petitioners to sustain their burden at trial, this issue is best considered at the outset of trial.
4
5 Deciding this issue in advance may simplify the presentation of proof during trial and help
6
7 determine the length, scope, and necessity of presentation of rebuttal or alternative evidence.
8
9

10 **III. LEGAL AUTHORITY**

11 This motion is based on Civil Rules 6 and 7 and Local Rule 7(b)(1)(F), on WSDCC's
12 Motion to Clarify filed concurrently herewith, and on the pleadings and motions already of
13 record.
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18 **IV. CONCLUSION**

19 For the reasons set forth above, WSDCC respectfully requests that the Court grant its
20 Motion to Shorten Time to consider its Motion to Clarify that a "Convicted Felony Record"
21 Alone is Not Sufficient Proof of a Felony Conviction and to Require Best Evidence of a
22 Felony Conviction.
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1 DATED: May 18, 2005.
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4 **PERKINS COIE LLP**

5
6
7 By s/ William C. Rava

8 Kevin J. Hamilton, WSBA # 15648
9 David J. Burman, WSBA #10611
10 William C. Rava, WSBA # 29948
11 1201 Third Avenue, Suite 4800
12 Seattle, WA 98101-3099
13
14

15 Attorneys for Intervenor-Respondent
16 Washington State Democratic Central
17 Committee
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SPEIDEL LAW FIRM

Russell J. Speidel, WSBA # 12838
7 North Wenatchee Avenue, Suite 600
Wenatchee, WA 98807

JENNY A. DURKAN

Jenny A. Durkan, WSBA # 15751
c/o Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

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Timothy Borders et al.,

Petitioners,

v.

King County et al.,

Respondents,

and

Washington State Democratic Central
Committee,

Intervenor-Respondent.

DECLARATION OF WILLIAM C.
RAVA IN SUPPORT OF
WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE'S MOTION
TO SHORTEN TIME FOR MOTION TO
CLARIFY THAT A "CONVICTED
FELONY RECORD" ALONE IS NOT
SUFFICIENT PROOF OF A FELONY
CONVICTION AND TO REQUIRE
BEST EVIDENCE OF A FELONY
CONVICTION

[15934-0006/SL051380.108]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

1 William C. Rava declares:

2 1. I am one of the attorneys of record for the Washington State Democratic
3 Central Committee ("WSDCC") in the above-captioned action.
4

5 2. Along with other counsel and legal staff, I have been diligently preparing for
6 trial in this matter. As part of doing so, we have been reviewing the documents produced by
7 Petitioners in support of their allegations that felons voted illegally in the 2004 General
8 Election. Earlier this week, we realized that for 200 people on Petitioners' alleged felon
9 voter list, the only documents related to their felony convictions are "Convicted Felon
10 Reports" ("CFRs") which list the information with which an individual was charged but do
11 not list the crime of which an individual was ultimately convicted, or whether that
12 conviction was for a felony or a misdemeanor.
13

14 3. On May 16, 2005, upon making that determination, I contacted Eric B.
15 Martin, one of the counsel for Petitioners, via email in an attempt to determine what
16 Petitioners understood the purpose of a CFR. A true and correct copy of that email
17 correspondence is attached hereto as Exhibit A.
18

19 4. In my email I asked: "Convicted felon reports (CFR). Can you tell me what
20 these are and what they are used for?" In response, Mr. Martin stated: "These are reports
21 generated by the Superior Court showing the date & nature of convictions."
22

23 5. Following that exchange, I reviewed a CFR to confirm that there was no
24 listing on a CFR of the nature of the conviction. After doing so I emailed Mr. Martin again
25 to explain that the CFRs only provided a listing of what crimes an individual was charged
26 with, and did not, in fact, include any indication of the nature of the conviction. Later that
27 same day I also provided Mr. Martin with an example of a CFR that listed felonies with
28 which an individual was charged but no indication of the nature of the ultimate conviction,
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DECLARATION OF WILLIAM C. RAVA IN
SUPPORT OF WSDCC'S MOTION TO
SHORTEN TIME FOR MOTION TO
CLARIFY - 2

[15934-0006/SL051380.108]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

1 for an individual who was actually convicted of a gross misdemeanor. A true and correct
2 copy of the letter regarding that information is attached hereto as Exhibit B.
3

4 6. On May 17, having heard no response from Mr. Martin, I emailed him again
5 to request Petitioners' position on this issue. In that email correspondence I stated that
6 WSDCC would not stipulate that a CFR alone is sufficient to meet the burden of proving a
7 felony conviction occurred. Mr. Martin replied as follows: "I understand your position
8 regarding CFRs. I believe we will have to leave that one for the judge."
9

10 7. On the morning of May 18, I also learned from Mr. Martin that Petitioners
11 might attempt to rely on other secondary databases that might or might not reflect on a
12 person's conviction status and the severity of the convicted crime (such as court dockets).
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23 **I declare under penalty of perjury under the laws of the**
24 **State of Washington that the foregoing is true and correct.**
25

26 EXECUTED at Seattle, Washington, this 18th day of May, 2005
27

28
29 /s/ William C. Rava
30 William C. Rava
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DECLARATION OF WILLIAM C. RAVA IN
SUPPORT OF WSDCC'S MOTION TO
SHORTEN TIME FOR MOTION TO
CLARIFY - 3

[15934-0006/SL051380.108]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

Exhibit A

Exhibit A

Rava, William C.

From: Martin, Eric B. [ericbmartin@dwtd.com]
Sent: Tuesday, May 17, 2005 7:34 PM
To: Rava, William C.
Subject: RE: Felons and other illegals

I understand your position regarding CFRs. I believe we will have to leave that one for the judge. I assume we will still be able to stipulate to the existence of CFRs in individual files.

I am working on the list you provided right now & hope to have a response to some of the names tonight or early tomorrow. In addition, I believe we will be providing information regarding your voters at the same time (or thereabouts).

EBM

-----Original Message-----

From: Rava, William C. [mailto:WRava@perkinscoie.com]
Sent: Tuesday, May 17, 2005 7:28 PM
To: Martin, Eric B.
Subject: RE: Felons and other illegals

Where are you on this issue? We believe you have approx. 200 alleged felons for whom the only documentary evidence of a conviction is a CFR. Unless you provide me with persuasive authority, we will not be stipulating that a CFR is alone sufficient to meet your burden of showing a felony conviction.

Also, when are we going to start talking about the lists, individual voters, debunks and the like. I've been trying to initiate such a conversation for 4 weeks now (see my 4/19 letter to David Bowman) to no avail. If petitioners want a stip before Monday, we need to get working and fast.

There's plenty to talk about now, even as documents pour in.

Will Rava
(206) 359-6338 direct
(206) 359-7338 fax

-----Original Message-----

From: Rava, William C.
Sent: Monday, May 16, 2005 4:32 PM
To: 'Martin, Eric B.'
Subject: RE: Felons and other illegals

For an example of the unreliability of CFRs, see my letter to David Bowman of 4/22 and in particular the documents related to Ms. Steinman in Skagit County.

Will Rava
(206) 359-6338 direct
(206) 359-7338 fax

-----Original Message-----

From: Rava, William C.
Sent: Monday, May 16, 2005 2:45 PM
To: 'Martin, Eric B.'
Subject: RE: Felons and other illegals

As to #2, I don't read CFRs as you do. They list the charged information, but don't appear to say anything about what the person was actually convicted of. It is my understanding that, in the criminal law world, prosecutors must use certified copies of the judgment and sentences to prove convictions and to avoid mistakes that are inherent in data entry systems. The CFR is a secondary source, and as such has inherent reliability problems, similar to those we've already argued relating to voter crediting.

Will Rava
(206) 359-6338 direct
(206) 359-7338 fax

-----Original Message-----

From: Martin, Eric B. [mailto:erichbmartin@dwt.com]
Sent: Monday, May 16, 2005 1:38 PM
To: Rava, William C.
Subject: RE: Felons and other illegals

#1 - I'll get back to you shortly on that.
#2 - These are reports generated by the Superior Court showing the date & nature of convictions.
#3 - I believe we have death certificates. I don't think we rely on any other type of evidence, but I'm having someone double-check that. #4 - This may have to be addressed on an individual-voter basis - I don't believe our spreadsheet lists the specific conviction. To the extent that the list could be used to check against the conviction record contained in the files, if it would be useful I agree & I think we should be able to easily agree on what is and is not a felony (of course I don't practice criminal law, so maybe I'm wrong, but I don't think so)
#5 - I agree, especially the DOC records. I have someone looking at the DOC records right now to make sure we have a good understanding of the meaning of each type of disposition. Once we have that list I'll send it to you to see if you concur. #6 - Agreed.

EBM

-----Original Message-----

From: Rava, William C. [mailto:WRava@perkinscoie.com]
Sent: Monday, May 16, 2005 1:07 PM
To: Martin, Eric B.
Subject: Felons and other illegals

Eric,

Here were some of the non-individualized issues I thought we could start talking about. I'll send along others as they come to me.

(1) Suspended and deferred sentences. As I mentioned, our understanding is that crimes committed before July 1984 that resulted in a suspended/deferred sentence did not necessarily result in

a conviction such that civil rights would have been revoked. Do you have a different understanding?

(2) Convicted felon reports (CFR). Can you tell me what these are and what they are used for?

(3) What sort of evidence are you anticipating putting forward to show listed voters were not alive when a ballot was allegedly cast in their name? Death certificates? Obits?

(4) There are a number of crimes that are not felonies that appear in documents more than once (attempted VUCSA comes to mind, as does third/fourth degree malicious mischief). We should work up lists and do whatever diligence is required so that we can agree on what is and is not a felony.

(5) There are lots of different kinds of discharges/terminations/etc from various parties for various purposes (DOC 5990s, discharge). We should try (and should be able) to work through any conflicting understandings of the legal impact of such documents.

(6) Identity issues. I could see both parties having various questions related to ensuring that the alleged voter is the same person as the alleged felon. It may be easiest to talk about these issues using specific examples. But we should be prepared to discuss and resolve as many of these as possible.

I welcome your thoughts on these and any additional issues you think we can talk about with or without reference to specific voters.

Will

William C. Rava
Perkins Coie LLP
1201 Third Ave., Ste. 4800
Seattle, WA 98101
(206) 359-6338 direct
(206) 359-7338 fax
wraava@perkinscoie.com
www.perkinscoie.com <www.perkinscoie.com>

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Exhibit B

Exhibit B



William C. Rava
PHONE: 206.359.6338
FAX: 206.359.7338
EMAIL: wrava@perkinscoie.com

1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
PHONE: 206.359.8000
FAX: 206.359.9000
www.perkinscoie.com

April 22, 2005

VIA FACSIMILE

David Bowman, Esq.
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

**Re: Borders, et al. v. King County, et al.
WSDCC Supplemental Discovery Responses**

Dear David:

I write to supplement WSDCC's discovery responses. Enclosed herewith please find documents relating to Petitioners' accusations against the following 4 people.

<i>Petitioners' Reference</i>	<i>Name</i>	<i>Attached Documents</i>	<i>Description</i>
Bowman Ex. 2, No. 48	Kershner, Thelma P.	PIER 00809-810 PIER 00831-834	No signature, ballot not counted
Bowman Ex. 1, No. 235	Serrano, Amber	April 11, 2005 Janine Joly letter	Not a felon;
Bowman, Ex. 1, No. 817	Steinman, Anjanette	Declaration of Skagit County Deputy Clerk	Convicted of gross misdemeanor, not felony

[15934-0006-000000/SL051100.023]

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NEW YORK • OMAHA • PHOENIX • PORTLAND • SAN FRANCISCO • SEATTLE • WASHINGTON, D.C.

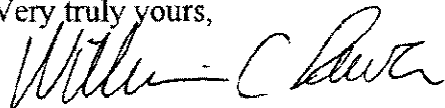
Perkins Coie LLP and Affiliates

David Bowman, Esq.
April 22, 2005
Page 2

<i>Petitioners' Reference</i>	<i>Name</i>	<i>Attached Documents</i>	<i>Description</i>
Bowman Ex. 1, No. 798	Wilson, Warren G.	PIER 00809-810 PIER 00831-834	Signature did not match; ballot not counted

Our investigation is ongoing, and we will supplement again as appropriate.

Very truly yours,



William C. Rava

Enclosures

cc: Thomas Ahearne (w/encls.)

Judge John E. Bridges
Department 3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

Timothy Borders, et al.,

Petitioners,

vs.

King County, et al.,

Respondents,

and

Washington State Democratic Central
Committee,

and

Libertarian Party of Washington State et al.,

Intervenors – Respondents.

No. 05-2-00027-3

DECLARATION OF SKAGIT COUNTY
DEPUTY CLERK, SELMA ALBEE

TO: Petitioners
AND TO: Davis Wright Tremaine LLP, their attorneys

I, Selma Albee, declare under penalty of perjury under the laws of the State of
Washington that the following is true and correct to the best of my knowledge and belief:

DECLARATION OF SKAGIT COUNTY
DEPUTY CLERK, SELMA ALBEE - 1

SKAGIT COUNTY PROSECUTING ATTORNEY
605 S. 3RD ST. -- Courthouse Annex
Mount Vernon, WA 98273
Phone: (360) 336-9460
Fax: (360) 336-9497

1 1. I am a Deputy Clerk at the Skagit County Clerk's Office and am competent to be a
2 witness herein.

3 2. This declaration is prepared in connection with the Subpoena Duces Tecum dated
4 April 13, 2005 addressed to Skagit County Chief Civil Deputy, Don LeRoy Anderson and
5 issued by Davis Wright Tremaine LLP, the attorneys for the petitioners in the above-
6 referenced action (the "Subpoena").

7
8 3. This declaration is prepared for the purpose of providing information available to the
9 Skagit County Clerk's Office on whether or not a certificate of discharge pursuant to RCW
10 9.94A.637 has been entered in certain criminal actions against the one individual listed in
11 Exhibit 1 to the Subpoena (the "Named Voter"): Anjanette M. Steinman, voter identification
12 number 21069.


13
14 4. For clarification purposes, Anjanette Steinman, the only person named in Exhibit 1 of
15 the Subpoena (the "Named Voter") was never convicted of a felony. The named voter was
16 convicted of a gross misdemeanor and as such was eligible to vote in the 2004 General
17 Election. A copy of the corrected conviction report (a public document) was received from
18 the Clerk's Office and is provided as attachment "A".

19
20 5. Subject to the limitations stated in this declaration, the SCOMIS case entries reflect
21 that a certificate of discharge was entered for Anjanette M. Steinman. The certificate of
22 discharge was entered to avoid any confusion and to clarify the status of Anjanette M.
23 Steinman as noted in # 4 above.
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30 DECLARATION OF SKAGIT COUNTY
DEPUTY CLERK, SELMA ALBEE - 2

SKAGIT COUNTY PROSECUTING ATTORNEY
605 S. 3RD ST. -- Courthouse Annex
Mount Vernon, WA 98273
Phone: (360) 336-9460
Fax: (360) 336-9497

EXECUTED this 19th day of April, 2005 at Mount Vernon, Washington.


Selma Albee

DECLARATION OF SKAGIT COUNTY
DEPUTY CLERK, SELMA ALBEE - 3

SKAGIT COUNTY PROSECUTING ATTORNEY
605 S. 3RD ST. -- Courthouse Annex
Mount Vernon, WA 98273
Phone: (360) 336-9460
Fax: (360) 336-9497

5049
08-29-2002

SKAGIT COUNTY SUPERIOR COURT
CONVICTED FELON REPORT
FOR ACTIVITY FROM 08/22/2002 THROUGH 08/28/2002

PAGE

PERSON IDENTIFICATION

SID #.....
DEF01 STEINMAN, ANJANETTE MICHELLE
BIRTH DATE: 09/18/1973
GENDER.....: Female
RACE.....: White
ADDRESS.....: 2213 31ST ST.
ANACORTES

AGE AT COMPLETION...: SKAGIT COUNTY, WASH.
FILED

WA 98221

SEP 23 2002

PHYLLIS COOLE-MCKEEHEN, CO. CLERK
By MC Deputy

CASE #.....: 02-1-00228-4

CASE RESOLUTION.....

08/22/2002 GUILTY PLEA

CASE COMPLETION.....

08/22/2002 JUDGMENT/ORDER/DECREE FILED

CHARGE INFORMATION

RS CNT ROW/CODE DESCRIPTION

RS	CNT	ROW/CODE	DESCRIPTION	INFO/VIOI.	SEVERITY
				DATE	CATEGORY
1		9A.52.025	INFORMATION APD 01-A05159 RESIDENTIAL BURGLARY	04/19/2002	
1		9A.52.025	AMENDED INFORMATION RESIDENTIAL BURGLARY	07/18/2001	FELONY
6	1	9A.52.030	SECOND AMENDED INFORMATION BURGLARY 2ND DEGREE	05/14/2002	
		9A.28.020	CRIMINAL ATTEMPT <i>Pled to Attempt</i>	07/18/2001	FELONY
-----END OF CASE-----					

3-7-05

Report sent in error. Def. pled to attempt and
should be a gross misd.

TO THE AUDITOR OF Skagit COUNTY
YOU ARE HEREBY NOTIFIED, PURSUANT TO RCW 10.84.021,
THAT THE ABOVE NAMED DEFENDANT WAS CONVICTED
OF A FELONY, IN SKAGIT COUNTY SUPERIOR COURT ON
THE ABOVE COMPLETION DATE NOTED.

Phyllis Coole-McKeen, Skagit County Clerk
S. Allen Deputy Clerk

Judge John E. Bridges
Department 3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

Timothy Borders, et al.,

Petitioners,

vs.

King County, et al.,

Respondents,

and

Washington State Democratic Central
Committee,

and

Libertarian Party of Washington State et al.,

Intervenors – Respondents.

No. 05-2-00027-3

SKAGIT COUNTY'S OBJECTION TO
INSPECTION AND COPYING OF MATERIALS

TO: Petitioners
AND TO: Davis Wright Tremaine LLP, their attorneys

In accordance with CR 45(d)(1), Skagit County hereby objects to the inspection and
copying of all the materials designated in the Subpoena Duces Tecum dated April 13, 2005


SKAGIT COUNTY'S OBJECTION TO
INSPECTION AND COPYING OF MATERIALS

SKAGIT COUNTY PROSECUTING ATTORNEY
605 S. 3RD ST. -- Courthouse Annex
Mount Vernon, WA 98273
Phone: (360) 336-9460
Fax: (360) 336-9497

1 addressed to Skagit County Prosecuting Attorney, Don LeRoy Anderson and issued by
2 Davis Wright Tremaine LLP, the attorneys for the petitioners in this action. The objections
3 include, but are not necessarily limited to, the following: the place of production is improper
4 under CR 45(d)(2); some or all of the materials may be exempt or otherwise non-
5 discoverable by rule, law or otherwise; and, as an additional ground with regard to item
6 number 3 under "Documents Requested," Skagit County did not identify any such
7 individuals and no such ballots were "counted in Chelan County" as described.
8
9

10 DATED this 19th day of April, 2005.
11
12

13 SKAGIT COUNTY PROSECUTING ATTORNEY
14

15 
16 Don L. Anderson, WSBA # 12445
17 Chief Prosecuting Attorney (Civil)
18 Attorney for Skagit County
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30 SKAGIT COUNTY'S OBJECTION TO
INSPECTION AND COPYING OF MATERIALS

- 2

SKAGIT COUNTY PROSECUTING ATTORNEY
605 S. 3RD ST -- Courthouse Annex
Mount Vernon, WA 98273
Phone: (360) 336-9468
Fax: (360) 336-9497



Pierce County

Office of Prosecuting Attorney

REPLY TO:
CIVIL DIVISION
855 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160
FAX: (253) 798-6713

GERALD A. HORNE
Prosecuting Attorney

Main Office: (253) 798-6732
(WA Only) 1-800-992-2456

March 18, 2005

RECEIVED
MAR 21 2005
PERKINS COIE

Kevin J. Hamilton
PERKINS COIE LLP
1201 Third Ave., Suite 4800
Seattle, WA 98101-3099

RE: Public Records Request

Dear Mr. Hamilton:

Please find enclosed copies pursuant to your record request. At this time no charge for the copies has been assessed. When the search for the requested records is completed a letter will accompany the copies with a final copy count and amount due.

If you should have any questions or concerns do not hesitate to call me at the number below. Thank you.

Very truly yours,

Heather R. Foster
Paralegal
(253) 798-7787

Enclosures



Printed on recycled paper

PIER 00809

Absentee Envelope copies
for alledged felons +
deceased (See CIVIL DIVISION
COPY RECEIVED so far)

MAR 18 2005

GERALD A. HORNE
PIERCE COUNTY PROSECUTING ATTORNEY

one ^{alleged} felon - wilson
one ^{alleged} deceased - Kershner

Both ballots not counted
- one sig didn't match
one unsigned

Before you seal this envelope
don't forget to sign and date.

Plunked

LETTER SENT

10/28



Date Oct 26, 2004
Signature Warren G. Wilson Jr.

1. Two witnesses required if using a mark (X)

2. Two witnesses

If the voter is unable to sign this letter, the voter must be witnessed by 2 people. Signatures using a Power of Attorney

1231 11/02/2004 26432.00 188710
WARREN G WILSON
9801 STELLA COM BLVD
LAW ST
REWOOD, CO

Before you seal this envelope
don't forget to sign and da



D
Auditor
04
HY



THELMA P KERSHNER
15927 SPANAWAY LOOP RD S
SPANAWAY, WA 98387-9028



Date

Nature

No witnesses required if using a mark (X)

These are the four
poll voters (all alledged
falons)

OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY, WASHINGTON
CIVIL DIVISION

Norm Maleng
Prosecuting Attorney

2350 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9015
FAX (206) 296-0191

April 11, 2005

Dean Logan, Director
King County Records, Elections and Licensing Services Division
500 Fourth Avenue, Room 553
Seattle, Washington 98104

Re: Voter Registration Challenge – Amber Serrano (DOB: 10/19/77)
Voter Identification No. 30385209

Dear Mr. Logan:

On March 31, 2005, you presided over a voter registration challenge regarding Amber Serrano. The challenge was filed by the King County Prosecutor's Office and was based on a Judgment and Sentence that listed Cynthia Vivette Cornethan a.k.a. Amber M. Serrano as the defendant. Based on the evidence presented and the argument of the Prosecuting Attorney's Office, you ordered that Ms. Serrano's voter registration be cancelled.

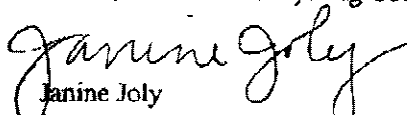
Last week Ms. Serrano informed your office that she was a victim of identity theft a few years ago and that she is still dealing with the repercussions of that incident. It appears that the individual who stole Ms. Serrano's identity was Ms. Cornethan and that she was using Ms. Serrano's name at the time charges were filed against her. In further researching this matter, it is now clear that Ms. Serrano's voter registration should not have been cancelled based on the felony conviction that was presented to you. According to our records, Ms. Serrano has never been convicted of a felony.

I am requesting that you reinstate Ms. Serrano's voter registration based on the fact that the cancellation was not warranted. I have apologized to Ms. Serrano for the inconvenience and I also apologize for any inconvenience this has caused for you or your staff. If you have any questions, please do not hesitate to contact me.

Thank you for your assistance.

Sincerely,

For NORM MALENG, King County Prosecuting Attorney's Office


Janine Joly
Sr. Deputy Prosecuting Attorney

cc: Amber Serrano
27319 24th Place South
Federal Way, Washington 98003

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THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

Timothy Borders et al.,
Petitioners,
v.
King County et al.,
Respondents,
and
Washington State Democratic Central Committee,
Intervenor-Respondent.

NO. 05-2-00027-3
NOTE FOR MOTION

TO: THE CLERK OF THE COURT
AND TO: All parties and counsel of record

1 NOTE FOR MOTION

2
3 Please note that this matter has been set before the Honorable John E. Bridges on the
4
5 23rd day of May, 2005 at 8:30 a.m.

6
7 **Nature of Hearing:** Washington State Democratic Central
8 Committee's Motion to Shorten Time for Motion to Clarify that a
9 "Convicted Felony Record" Alone Is Not Sufficient Proof of a Felony
10 Conviction and to Require Best Evidence of a Felony Conviction
11

12 DATED this 18th day of May, 2005.
13

14 **PERKINS COIE LLP**

SPEIDEL LAW FIRM

15
16
17
18 By /s/ William C. Rava

19 Kevin J. Hamilton, WSBA # 15648
20 David J. Burman, WSBA #10611
21 William C. Rava, WSBA # 29948
22 1201 Third Avenue, Suite 4800
23 Seattle, WA 98101
24

Russell J. Speidel, WSBA # 12838
7 North Wenatchee Avenue, Suite 600
Wenatchee, WA 98807

JENNY A. DURKAN

Jenny A. Durkan, WSBA # 15751
c/o Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

25
26 Attorneys for Intervenor-Respondent
27 Washington State Democratic Central
28 Committee
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THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

Timothy Borders et al.,

Petitioners,

v.

King County et al.,

Respondents,

and

Washington State Democratic Central
Committee,

Intervenor-Respondent.

NO. 05-2-00027-3

DECLARATION OF WILLIAM C.
RAVA IN SUPPORT OF
WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE'S MOTION
TO CLARIFY THAT A "CONVICTED
FELONY RECORD" ALONE IS NOT
SUFFICIENT PROOF OF A FELONY
CONVICTION AND TO REQUIRE
BEST EVIDENCE OF A FELONY
CONVICTION

DECLARATION OF WILLIAM C. RAVA IN
SUPPORT OF WSDCC'S MOTION TO
CLARIFY THAT A "CONVICTED FELONY
RECORD" ALONE IS NOT SUFFICIENT
PROOF OF A FELONY CONVICTION AND
TO REQUIRE BEST EVIDENCE OF A
FELONY CONVICTION - 1

[15934-0006/SL051380.131]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

1 William C. Rava declares:

2 1. I am one of the attorneys of record for the Washington State Democratic
3 Central Committee ("WSDCC") in the above-captioned action.
4

5 2. Attached hereto as Exhibit A is a true and correct copy of a "Convicted Felon
6 Report" ("CFR") that was produced by Petitioners in this matter. Petitioners have not
7 produced a corresponding judgment of conviction for this individual.
8

9 3. Certified copies of judgments of convictions (often entitled "Judgment and
10 Sentence") are readily available at the county courthouses for all Washington counties,
11 including King County. WSDCC has collected from county court files around the State,
12 copies of the judgment of conviction for every individual on WSDCC's list of illegal felon
13 voters. Petitioners are aware of how to obtain copies of judgments of conviction, as they
14 have done so for a number of the individuals they allege to be felons who voted in the 2004
15 General Election. For example, attached hereto as Exhibit B is a true and correct copy of a
16 Judgment & Sentence that was produced by Petitioners in this matter.
17

18 4. Along with other counsel and legal staff, I have been diligently preparing for
19 trial in this matter. As part of doing so, we have been reviewing the documents produced by
20 Petitioners in support of their allegations that felons voted illegally in the 2004 General
21 Election. Earlier this week, we realized that for 200 people on Petitioners' alleged felon
22 voter list, the only documents related to their felony convictions are CFRs. Attached hereto
23 as Exhibit C is a true and correct copy of a list of those 200 individuals.
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25 5. On May 16, 2005, upon making that determination, I contacted Eric B.
26 Martin, one of the counsel for Petitioners, via email in an attempt to determine what
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DECLARATION OF WILLIAM C. RAVA IN
SUPPORT OF WSDCC'S MOTION TO
CLARIFY THAT A "CONVICTED FELONY
RECORD" ALONE IS NOT SUFFICIENT
PROOF OF A FELONY CONVICTION AND
TO REQUIRE BEST EVIDENCE OF A
FELONY CONVICTION - 2

[15934-0006/SL051380.131]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

1 Petitioners understood the purpose of a CFR. A true and correct copy of that email
2 correspondence is attached hereto as Exhibit D.
3

4 6. In my email I asked: "Convicted felon reports (CFR). Can you tell me what
5 these are and what they are used for?" In response, Mr. Martin stated: "These are reports
6 generated by the Superior Court showing the date & nature of convictions." This was the
7 first time that counsel for WSDCC was made aware that Petitioners believed that a CFR
8 alone is sufficient proof that a person was actually convicted of a felony.
9

10 7. On the morning of May 18, I also learned from Mr. Martin that Petitioners
11 might attempt to rely on other secondary databases that might or might not reflect on a
12 person's conviction status and the severity of the convicted crime (such as court dockets).
13

14 8. Attached hereto as Exhibit E is a true and correct copy of the Verbatim
15 Report of Proceedings, *Borders v. King County*, No. 05-2-00027-3, dated May 2, 2005.
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25 **I declare under penalty of perjury under the laws of the**
26 **State of Washington that the foregoing is true and correct.**
27

28 EXECUTED at Seattle, Washington, this 18th day of May, 2005
29

30
31 /s/ William C. Rava
32 William C. Rava
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45 DECLARATION OF WILLIAM C. RAVA IN
46 SUPPORT OF WSDCC'S MOTION TO
47 CLARIFY THAT A "CONVICTED FELONY
RECORD" ALONE IS NOT SUFFICIENT
PROOF OF A FELONY CONVICTION AND
TO REQUIRE BEST EVIDENCE OF A
FELONY CONVICTION - 3

[15934-0006/SL051380.131]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

Exhibit A

Exhibit A

S049

06-08-2000

KING COUNTY SUPERIOR COURT

CONVICTED FELON REPORT

FOR ACTIVITY FROM 06/01/2000 THROUGH 06/2000

-----PERSON IDENTIFICATION-----

SID #: 11546646

DEF01 CONYERS, DAVID CORNELIUS

BIRTH DATE: 05/07/1949

AGE AT COMPLETION: 51

GENDER: Male

RACE: Black

ADDRESS: 2508 S LANE ST

SEATTLE

WA

CASE #: 99-1-09921-1 SEA

CASE RESOLUTION: 04/06/2000 GUILTY PLEA

CASE COMPLETION: 05/12/2000 JUDGMENT/ORDER/DECREE FILED

FILED
KING COUNTY, WASHINGTON
JUN - 9 2000
SUPERIOR COURT CLERK

-----CHARGE INFORMATION-----

RS	CNT	RCW/CODE	DESCRIPTION	INFO/VIOI. DATE	SEVERITY CATEGORY
			ORIGINAL INFORMATION LE#99478620	11/17/1999	
	1	9A.36.011	ASSAULT 1ST DEGREE	11/11/1999	FELONY
	2	9A.36.150	INTERFERING-DOMESTIC VIOL REPORTING	11/11/1999	GROSS MISD
	3	9A.36.041	ASSAULT 4TH DEGREE	11/12/1999	GROSS MISD
	4	9A.36.150	INTERFERING-DOMESTIC VIOL REPORTING	11/12/1999	GROSS MISD
			1ST AMENDED INFORMATION	04/11/2000	
	1	9A.36.031	ASSAULT 3RD DEGREE	11/11/1999	FELONY
	2	9A.36.150	INTERFERING-DOMESTIC VIOL REPORTING	11/11/1999	GROSS MISD
	3	9A.36.041	ASSAULT 4TH DEGREE	11/12/1999	GROSS MISD
	4	9A.36.150	INTERFERING-DOMESTIC VIOL REPORTING	11/12/1999	GROSS MISD
			2ND AMENDED INFORMATION	04/06/2000	
G	1	9A.36.031	ASSAULT 3RD DEGREE	11/11/1999	FELONY
		NOTE	DOMESTIC VIOLENCE		
G	2	9A.36.150	INTERFERING-DOMESTIC VIOL REPORTING	11/11/1999	GROSS MISD
G	3	9A.36.041	ASSAULT 4TH DEGREE	11/12/1999	GROSS MISD
		NOTE	DOMESTIC VIOLENCE		

=====END OF CASE=====



53

Exhibit B

Exhibit B

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

OF WASHINGTON

Plaintiff,

v.

DAVID C CONYERS

Defendant.

No. 99-1-09921-1 SEA, SEE ALSO
NON-FELONY J/S

JUDGMENT AND SENTENCE

FILED
MAY 19 AM 10:30
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

I. HEARING

1.1 The defendant, the defendant's lawyer, KIM EXE, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

1.2 The state has moved for dismissal of count(s) _____

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 04-06-2000 by plea of:

Count No.: I Crime: ASSAULT IN THE 3RD DEGREE
RCW 9A.36.031 I E Crime Code 01035
Date of Crime 11-11-99 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code _____
Date of Crime _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code _____
Date of Crime _____ Incident No. _____

☐ Additional current offenses are attached in Appendix A.

SPECIAL VERDICT/FINDING(S):

(a) ☐ A special verdict/finding for being armed with a **Firearm** was rendered on Count(s): _____

(b) ☐ A special verdict/finding for being armed with a **Deadly Weapon** other than a **Firearm** was rendered on Count(s): _____

(c) ☒ A special verdict/finding was rendered that the defendant committed the crimes(s) with a **sexual motivation** in Count(s): _____

(d) ☒ A special verdict/finding was rendered for **Violation of the Uniform Controlled Substances Act** offense taking place
☐ in a school zone ☐ in a school ☐ on a school bus ☐ in a school bus route stop zone ☐ in a public park ☐ in public
transit vehicle ☐ in a public transit stop shelter in Count(s): _____

(e) ☐ **Vehicular Homicide** ☐ **Violent Offense (D.W.I. and/or reckless)** or ☐ **Nonviolent (disregard safety of others)**

(f) ☒ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are: _____

OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

ACCTG

EXH



50

CERTIFIED COPY TO COUNTY

00 9 07 9 3

CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a) [REDACTED]	[REDACTED]	[REDACTED] 27.		SEATTLE
(b) 2 CTS ALST 2, BURG 2	10-28-82	ADULT	821016001	KING CO
(c)				
(d)				

☐ Additional criminal history is attached in Appendix B.

☐ Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)):

☐ One point added for offense(s) committed while under community placement for count(s)

2.4 SENTENCING DATA:

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	1	III			3 TO 8 MONTHS	5 YRS AND/OR \$10,000
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE:

☐ Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) Findings of Fact and Conclusions of Law are attached in Appendix D. The State ☐ did ☐ did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

☐ The Court DISMISSES Count(s)

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

☐ Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.

☐ Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth those circumstances in attached Appendix E.

☐ Restitution to be determined at future hearing on (Date) at m. ☐ Date to be set.

☐ Defendant waives presence at future restitution hearing(s).

Defendant shall pay Victim Penalty Assessments pursuant to RCW 7.68.035 in the amount of \$100 if all crime(s) date prior to 6-6-96 and \$500 if any crime date in the Judgment is after 6-5-96.

☒ Restitution is not ordered.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

(a) ☐ \$ Court costs; ☒ Court costs are waived;

(b) ☐ \$ Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104; ☒ Recoupment is waived (RCW 10.01.160);

(c) ☐ \$ Fine; ☐ \$1,000, Fine for VUCSA; ☐ \$2,000, Fine for subsequent VUCSA; ☐ VUCSA fine waived (RCW 69.50.430);

(d) ☐ \$ King County Interlocal Drug Fund; ☐ Drug Fund payment is waived;

(e) ☐ \$ State Crime Laboratory Fee; ☐ Laboratory fee waived (RCW 43.43.690);

(f) ☐ \$ Incarceration costs; ☒ Incarceration costs waived (9.94A.145(2));

(g) ☐ \$ Other cost for:

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$500. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

☐ Not less than \$ per month; ☒ On a schedule established by the defendant's Community Corrections Officer. ☐ The

Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.

EMENT ONE YEAR OR LESS: Defendant shall serve a term of total confinement in the King County Jail
able under RCW 9.94A.190(3) in the Department of Corrections as follows, commencing: ☐ Immediately; ☐
by no later than _____ m.

8 months/days on Count I

_____ months/days on Count _____

_____ months/days on Count _____

_____ months/days on Count _____

Work release is authorized if eligible.

☐ Home detention pursuant to RCW 9.94A.030(42) is ordered if defendant is eligible for ☐ _____ day(s), ☐ the last one-third
of the term of confinement, ☐ _____

☒ The terms in Count(s) No. II, III are concurrent/consecutive.

The sentence herein shall run concurrently/consecutively with the sentence in cause number(s) _____

but consecutive to any other term of confinement not referred to in this Judgment.

Credit is given for ☒ 184 day(s) served ~~by the King County Jail solely for~~ 87
this cause number pursuant to RCW 9.94A.120(15). ☒ Jail term is satisfied; defendant shall be released under this cause.

(a) ALTERNATIVE CONVERSION PURSUANT TO RCW 9.94A.380: _____ days of total confinement are hereby
converted to:

☐ _____ days of partial confinement to be served subject to the rules and regulations of the King County Jail.
☐ _____ days/hours community service under the supervision of the Department of Corrections to be completed
as follows: ☐ on a schedule established by the defendants community corrections officer. ☐ _____

☐ Alternative conversion was not used because: ☐ Defendant's criminal history, ☐ Defendant's failure to appear,
☐ Other: _____

(b) ☒ COMMUNITY SUPERVISION, RCW 9.94A.383: Defendant shall serve 12 months in community supervision.
Community supervision shall commence immediately but is tolled during any period of confinement. The Defendant
shall report to the Dept. of Corrections, Intake Officer, 2401 4th Avenue, 6th Floor, Seattle, WA, 98121-1435
(phone 464-7055) no later than 72 hours of the commencement of community supervision. The defendant shall
comply with all rules and regulations of the Department created for community supervision and shall not own, use, or
possess any firearm or ammunition.

☒ Defendant shall comply with special "crime related prohibitions" defined in RCW 9.94A.030 and set forth in
Appendix F.

4.5 ☒ NO CONTACT: For the maximum term of 5 years, defendant shall have no contact with _____

Peggy King
Violation of this no contact order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest;
any assault or reckless endangerment that is a violation of this order is a felony.

4.6 BLOOD TESTING: (sex offense, violent offense, prostitution offense, drug offense associated with the use of hypodermic
needles) Appendix G is a blood testing and counseling order that is part of and incorporated by reference into this Judgment
and Sentence.

4.7 ☐ OFF-LIMITS ORDER: (known drug trafficker) Appendix I is an off limits order that is part of and incorporated by
reference into this Judgment and Sentence.

4.8 ☐ SEX OFFENDER REGISTRATION: (sex offender crime conviction) Appendix J covering sex offender registration,
is attached and incorporated by reference into this Judgment and Sentence.

Violations of the conditions or requirements of this sentence are punishable for a period not to exceed sixty (60)
days of confinement for each violation. (RCW 9.94A.200(2))

Date: 5/12/00

Presented by:

Judge

Print Name: DOWNING

Deputy Prosecuting Attorney, Office WSBA ID #91002

Print Name: Jim Ferrell

Approved as to form:

Attorney for Defendant, WSBA # 21566

Print Name: KIMBERLY EYE

FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

DAVID CORNELIUS CONYERS

DATED: 12 May 2000

W. L. Sheehey
JUDGE, KING COUNTY SUPERIOR COURT

DEFENDANT'S SIGNATURE David Conyers

DEFENDANT'S ADDRESS 2508 So. Lane St.

SEATTLE, WA

ATTESTED BY:

PAUL L. SHEEHEY, SUPERIOR COURT CLERK

BY: Paul L. Sheehey

DEPUTY CLERK

CERTIFICATE

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.

DATED: _____

CLERK

BY: _____

DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO. WA11546646

DATE OF BIRTH: MAY 7, 1949

SEX: M

RACE: B

JR COURT OF WASHINGTON FOR KING COUNTY

WASHINGTON

Plaintiff)

No. 99-1-09921-1 SEA

MYERS, David Cornelius

Defendant)

Count I:

JUDGMENT AND SENTENCE

(FELONY) – APPENDIX F

ADDITIONAL CONDITIONS

OF SENTENCE

CRIME-RELATED PROHIBITIONS

1. Do not purchase, possess or use any illegal drug or drug paraphernalia and submit to urinalysis testing and searches based upon reasonable suspicion of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.
2. Do not purchase, possess or use alcohol (beverage or medicinal) and submit to testing and searches based upon reasonable suspicion of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.
3. Do not have direct or indirect contact with Peggy King, do not frequent the neighborhood in which she resides or her place of employment.
4. Do not cease taking prescribed medications as directed without written approval from a licensed medical professional.
5. Do not fail to inform the Community Corrections Officer of any romantic relationships to verify that the adult is aware of your conviction history and conditions of supervision.

AFFIRMATIVE CONDUCT REQUIREMENTS (FIRST-TIME OFFENDER WAIVER ONLY)

Date:

5/12/20

JUDGE, KING COUNTY SUPERIOR COURT

APPENDIX F

Exhibit C

Individuals for Whom Petitioners Have Only Produced CFRs to Prove Felony Convictions

	<u>Category</u>	<u>County</u>	<u>Last</u>	<u>First</u>	<u>Middle</u>
1	Felons	King	ADAMS	BILLY	W
2	Felons	King	AHERN	RANDALL	E
3	Felons	King	ALEXANDER	LATOYA	M
4	Felons	King	ANDERSON	ERIC	D
5	Felons	King	ANDERSON	JUSTIN	T
6	Felons	King	BARNETT	MYRA	H
7	Felons	King	BARRETT	MICHAEL	A
8	Felons	King	BEAVERS	RYAN	W
9	Felons	King	BECK	JOSEPH	L
10	Felons	King	BEECHAM	RICHARD	M
11	Felons	King	BELL	CHARLES	W
12	Felons	King	BELL	JOSEPH	E
13	Felons	King	BETTIS	TODD	R
14	Felons	King	BOWMAN	FRANCES	GENEVA
15	Felons	King	BRADFORD	JOHANNA	MARIE
16	Felons	King	BROWNE	DIANE	M
17	Felons	King	BRUCE	ROBERT	C
18	Felons	King	BRYANT	KENNETH	M
19	Felons	King	BUNNELL	DONETTE	SUZANNE
20	Felons	King	BURNS	SONIA	L
21	Felons	King	BYRD	ROBIN	R
22	Felons	King	CARTER	NICOLE	F
23	Felons	King	CHAMBERS	JOHN	F
24	Felons	King	CHAMBERS	VIOLETA	L
25	Felons	King	CHATEN	RORY	J
26	Felons	King	CHIPRUT	JOEL	J
27	Felons	King	COLIS	JAY	M
28	Felons	King	COX	MARLON	R
29	Felons	King	CUMMINS	GREGORY	J
30	Felons	King	CURENTON	CARL	L
31	Felons	King	DAILEY	ANNE	R
32	Felons	King	DAVENPORT	THOMAS	C
33	Felons	King	DAVIS	MELINDA	A
34	Felons	King	DAVISON	PAUL	G
35	Felons	King	DERMATES	SANDRA	A
36	Felons	King	DIAZ	BIANCA	JESSE
37	Felons	King	DISHMON	PAMALA	R
38	Felons	King	DOAN	MAI	T
39	Felons	King	DOUGLAS	LINDSAY	D
40	Felons	King	DURHAM	HERSCHEL	V
41	Felons	King	DYER	CYNTHIA	E
42	Felons	King	EACKER	BENJAMIN	J
43	Felons	King	FLEEKES	ROBERT	E
44	Felons	King	FOX	RONALD	D
45	Felons	King	GARCIA	TARA	L
46	Felons	King	GIBSON	RONALD	V
47	Felons	King	GOBLE	MARIANNE	G
48	Felons	King	GRAVES	MARVIN	EARL
49	Felons	King	GREENWOOD	BRIAN	J
50	Felons	King	GRIER	DAVID	A
51	Felons	King	GUERRA	ROBERT	J

Exhibit C

Individuals for Whom Petitioners Have Only Produced CFRs to Prove Felony Convictions

52	Felons	King	HAMILTON	ZACHARY	
53	Felons	King	HAMMACK	ROXANNE	MARIE
54	Felons	King	HART	GILBERT	
55	Felons	King	HAYES	TINA	M
56	Felons	King	HEIDELBERG	CEDRIC	D
57	Felons	King	HEINEN	ROSEMARY	
58	Felons	King	HEM	SAVY	BUN
59	Felons	King	HERNDON	JOSEPH	M
60	Felons	King	HERWANDER	GREGORY	J
61	Felons	King	HOMAN	ROBERT	W
62	Felons	King	HOOPS	EVERETT	J
63	Felons	King	HOWARD	ELROY	E
64	Felons	King	HUGHES	MARK	
65	Felons	King	HUNTER	JESSIE	HAROLD
66	Felons	King	JACKSON	JEROME	
67	Felons	King	KESSLER	JASON	SCOTT
68	Felons	King	KNOX	THOMAS	
69	Felons	King	KNUTSON	JUDITH	A
70	Felons	King	KOCH	CRAIG	L
71	Felons	King	LANDGRAF	ALAN	M
72	Felons	King	LASSESON	STEVEN	J
73	Felons	King	LAWRENCE	BILLY	E
74	Felons	King	LEES	JENNY	
75	Felons	King	LIMING	ROBERT	S
76	Felons	King	LOPEZ	FRANK	S
77	Felons	King	LOTT	GREG	W
78	Felons	King	LYSAK	THOMAS	P
79	Felons	King	MACQUARRIE	SCOTT	R
80	Felons	King	MARCOE	SCOTT	D
81	Felons	King	MARTENS	JAKOB	K
82	Felons	King	MARTINEZ	REBECCA	A
83	Felons	King	MATHISEN	MICHAEL	D
84	Felons	King	MAUESBY	NATALIA	TREVELL
85	Felons	King	MAXIE	WILLIAM	D
86	Felons	King	MAY	JEAN	M
87	Felons	King	MCALEER	ROBERT	JOHN
88	Felons	King	MCCABE	RYAN	P
89	Felons	King	MCCOY	JACQUELINE	M
90	Felons	King	MCKINSTRY	KEVIN	A
91	Felons	King	MEHLHAFF	JEREMY	J
92	Felons	King	MERKERSON	GREGORY	
93	Felons	King	MITCHELL	HELEN	I
94	Felons	King	MITCHELL	VERNON	G
95	Felons	King	MUSCAT	MIKE	ANTHONY
96	Felons	King	NASTASE	LAURA	M
97	Felons	King	NEWMAN	PAUL	E
98	Felons	King	NGUYEN	HUONG	T
99	Felons	King	NICHOLAS	RAYMOND	J
100	Felons	King	NOE	JOHN	PAUL
101	Felons	King	PARKER	PAMELA	M
102	Felons	King	PELTS	PAUL	A
103	Felons	King	PERKINS	GREGORY	M

Exhibit C

Individuals for Whom Petitioners Have Only Produced CFRs to Prove Felony Convictions

104	Felons	King	PETERSON	RICHARD	B
105	Felons	King	PETTIT	LARRY	L
106	Felons	King	PIFER	ANGELA	R
107	Felons	King	PORTER	ANTHONY	V
108	Felons	King	POTTERF	CORY	E
109	Felons	King	POWELL	KENNETH	BEIRNE
110	Felons	King	PUTNAM	JOE	W
111	Felons	King	RAGIN	JAMES	E
112	Felons	King	RANDLE	RENA	M
113	Felons	King	RAYMER	ROBERT	M
114	Felons	King	RICHARDSON	JAMES	R
115	Felons	King	ROBERTS	ROY	R
116	Felons	King	ROSS	DOUG	W
117	Felons	King	ROSS	FRANKLIN	O
118	Felons	King	RUCKER	JOHN	C
119	Felons	King	SANCHEZ	REINALDO	
120	Felons	King	SANCHEZ	RONDA	L
121	Felons	King	SARMIENTO	PABLO	
122	Felons	King	SCHROETER	BENJAMIN	
123	Felons	King	SHERIDAN	ANDREW	A
124	Felons	King	SILVA	RICARDO	A
125	Felons	King	SIMON	PATRICIA	A
126	Felons	King	SIMONTON	CAROLYN	A
127	Felons	King	SMALLEY	MARLON	A
128	Felons	King	SMITH	PATRICK	A
129	Felons	King	SPISAK	JEFFREY	L
130	Felons	King	STEWART	RACQUEL	L
131	Felons	King	STUBERG	THERESA	MAE
132	Felons	King	SUAREZ	JOSE	J
133	Felons	King	TA	SON	
134	Felons	King	TAGGART	MALCOLM	E
135	Felons	King	TAYLOR	JEFF	M
136	Felons	King	THOMAS	MICHAEL	G
137	Felons	King	THORNTON	JEREMY	M
138	Felons	King	TYSON	APRIL	A
139	Felons	King	WALTON	DONNA	L
140	Felons	King	WALTON	KEITH	B
141	Felons	King	WARE	CHRISTOPHER	P
142	Felons	King	WASHINGTON	CHRISTOPHER	LEE
143	Felons	King	WASHINGTON	JOSEPH	L
144	Felons	King	WATKINS	SARAH	A
145	Felons	King	WATSON	WENDY	L
146	Felons	King	WATTERS	DONALD	E
147	Felons	King	WERLING	MARK	B
148	Felons	King	WHEELER	SCOTT	
149	Felons	King	WHITEEAGLE	KEITH	M
150	Felons	King	WIEDERHORN	MITCHELL	L
151	Felons	King	WIESE	WILLIAM	TODD
152	Felons	King	WILBUR	MICHAEL	S
153	Felons	King	WILCOX	ARTHUR	W
154	Felons	King	WILLIAMS	TERESA	M
155	Felons	King	WINSTON	MARSHALL	C

Exhibit C

Individuals for Whom Petitioners Have Only Produced CFRs to Prove Felony Convictions

156	Felons	King	WORLEY	PEARL	ANN
157	Felons	King	THOMPSON	CY	A
158	Felons	King	TOUTONGHI	JOSEPH	G
159	Felons	King	CAMERON	KENNETH	M
160	Felons	King	EMAN	ROBERT	J
161	Felons	King	FLOYD	SHELIA	D
162	Felons	King	GIVENS	ELMER	
163	Felons	King	JOHNSON	LEONARD	G
164	Felons	King	ANDERSON	ROY	A
165	Felons	King	ARCHIE	MATTHEW	G
166	Felons	King	CHARNEY	KEN	W
167	Felons	King	DAWSON	DIANA	I
168	Felons	King	FREDRICK	RUSSELL	L
169	Felons	King	AITKEN	STASHA	S
170	Felons	King	ANDERSON	MARCUS	S
171	Felons	King	BECK	WILLIAM	H
172	Felons	King	BOGGS	KAIL	A
173	Felons	King	BROWN	JOANN	L
174	Felons	King	CLEMENS	TYRON	M
175	Felons	King	DAVIS	MARK	A
176	Felons	King	DOUCETTE	DAVID	H
177	Felons	King	EMANUEL	MICHAEL	J
178	Felons	King	ERLANDSON	LEIGH	M
179	Felons	King	FUREDY	MICHAEL	J
180	Felons	King	GORMAN	DAVID	SCOTT
181	Felons	King	GROPPER	ANGELA	M
182	Felons	King	HAYDON	TIFFANY	L
183	Felons	King	HAYWOOD	LEONARD	L
184	Felons	King	HOUCK	JACQUELINE	E
185	Felons	King	HOWARD	GARY	A
186	Felons	King	LEALOFI	MALEKO	TEPATASI
187	Felons	King	MCDUGALL	SHANE	THOMAS
188	Felons	King	MONDAY	KEVIN	L
189	Felons	King	MOORE	JOHNNIE	L
190	Felons	King	MYLES	ROGER	A
191	Felons	King	NELSON	CHRISTOPHER	JAMES
192	Felons	King	NORTH	DENNIS	H
193	Felons	King	PEREZ	DEBRA	M
194	Felons	King	PRESNELL	CAROLYN	M
195	Felons	King	REASOR	ANGELA	L
196	Felons	King	RIGGINS	JOYCE	M
197	Felons	King	SWAIN	TYSHON	C
198	Felons	King	TINGELSTAD	MARK	ALAN
199	Felons	King	TRAVIS	EDNA	D
200	Felons	King	WILLIAMSON	TAMMY	M

Rava, William C.

From: Martin, Eric B. [ericbmartin@dwt.com]
Sent: Tuesday, May 17, 2005 7:34 PM
To: Rava, William C.
Subject: RE: Felons and other illegals

I understand your position regarding CFRs. I believe we will have to leave that one for the judge. I assume we will still be able to stipulate to the existence of CFRs in individual files.

I am working on the list you provided right now & hope to have a response to some of the names tonight or early tomorrow. In addition, I believe we will be providing information regarding your voters at the same time (or thereabouts).

EBM

-----Original Message-----

From: Rava, William C. [mailto:WRava@perkinscoie.com]
Sent: Tuesday, May 17, 2005 7:28 PM
To: Martin, Eric B.
Subject: RE: Felons and other illegals

Where are you on this issue? We believe you have approx. 200 alleged felons for whom the only documentary evidence of a conviction is a CFR. Unless you provide me with persuasive authority, we will not be stipulating that a CFR is alone sufficient to meet your burden of showing a felony conviction.

Also, when are we going to start talking about the lists, individual voters, debunks and the like. I've been trying to initiate such a conversation for 4 weeks now (see my 4/19 letter to David Bowman) to no avail. If petitioners want a stip before Monday, we need to get working and fast.

There's plenty to talk about now, even as documents pour in.

Will Rava
(206) 359-6338 direct
(206) 359-7338 fax

-----Original Message-----

From: Rava, William C.
Sent: Monday, May 16, 2005 4:32 PM
To: 'Martin, Eric B.'
Subject: RE: Felons and other illegals

For an example of the unreliability of CFRs, see my letter to David Bowman of 4/22 and in particular the documents related to Ms. Steinman in Skagit County.

Will Rava
(206) 359-6338 direct
(206) 359-7338 fax

-----Original Message-----

From: Rava, William C.
Sent: Monday, May 16, 2005 2:45 PM
To: 'Martin, Eric B.'
Subject: RE: Felons and other illegals

As to #2, I don't read CFRs as you do. They list the charged information, but don't appear to say anything about what the person was actually convicted of. It is my understanding that, in the criminal law world, prosecutors must use certified copies of the judgment and sentences to prove convictions and to avoid mistakes that are inherent in data entry systems. The CFR is a secondary source, and as such has inherent reliability problems, similar to those we've already argued relating to voter crediting.

Will Rava
(206) 359-6338 direct
(206) 359-7338 fax

-----Original Message-----

From: Martin, Eric B. [mailto:erichbmartin@dwt.com]
Sent: Monday, May 16, 2005 1:38 PM
To: Rava, William C.
Subject: RE: Felons and other illegals

#1 - I'll get back to you shortly on that.
#2 - These are reports generated by the Superior Court showing the date & nature of convictions.
#3 - I believe we have death certificates. I don't think we rely on any other type of evidence, but I'm having someone double-check that. #4 - This may have to be addressed on an individual-voter basis - I don't believe our spreadsheet lists the specific conviction. To the extent that the list could be used to check against the conviction record contained in the files, if it would be useful I agree & I think we should be able to easily agree on what is and is not a felony (of course I don't practice criminal law, so maybe I'm wrong, but I don't think so)
#5 - I agree, especially the DOC records. I have someone looking at the DOC records right now to make sure we have a good understanding of the meaning of each type of disposition. Once we have that list I'll send it to you to see if you concur. #6 - Agreed.

EBM

-----Original Message-----

From: Rava, William C. [mailto:WRava@perkinscoie.com]
Sent: Monday, May 16, 2005 1:07 PM
To: Martin, Eric B.
Subject: Felons and other illegals

Eric,

Here were some of the non-individualized issues I thought we could start talking about. I'll send along others as they come to me.

(1) Suspended and deferred sentences. As I mentioned, our understanding is that crimes committed before July 1984 that resulted in a suspended/deferred sentence did not necessarily result in

a conviction such that civil rights would have been revoked. Do you have a different understanding?

(2) Convicted felon reports (CFR). Can you tell me what these are and what they are used for?

(3) What sort of evidence are you anticipating putting forward to show listed voters were not alive when a ballot was allegedly cast in their name? Death certificates? Obits?

(4) There are a number of crimes that are not felonies that appear in documents more than once (attempted VUCSA comes to mind, as does third/fourth degree malicious mischief). We should work up lists and do whatever diligence is required so that we can agree on what is and is not a felony.

(5) There are lots of different kinds of discharges/terminations/etc from various parties for various purposes (DOC 5990s, discharge). We should try (and should be able) to work through any conflicting understandings of the legal impact of such documents.

(6) Identity issues. I could see both parties having various questions related to ensuring that the alleged voter is the same person as the alleged felon. It may be easiest to talk about these issues using specific examples. But we should be prepared to discuss and resolve as many of these as possible.

I welcome your thoughts on these and any additional issues you think we can talk about with or without reference to specific voters.

Will

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Exhibit E

Exhibit E

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF CHELAN

3	TIMOTHY BORDERS, et al.,)	
4	Petitioners,)	No. 05-2-00027-3
5	vs.)	
6	KING COUNTY and DEAN LOGAN,)	
7	its Director of Records,)	
8	Elections and Licensing)	
9	Services, et al.,)	
10	Respondents,)	
11	and)	
12	WASHINGTON STATE DEMOCRATIC)	
13	CENTRAL COMMITTEE,)	
14	Intervenor-Respondent,)	
15	and)	
16	LIBERTARIAN PARTY OF)	
17	WASHINGTON STATE, et al.,)	
18	Intervenor-Respondent.)	

17 VERBATIM REPORT OF PROCEEDINGS
18 Court's Oral Decision

19 BE IT REMEMBERED that on the 2nd day of MAY, 2005, the
20 above-entitled and numbered cause came on for hearing before
21 the HONORABLE JOHN E. BRIDGES at the Chelan County Law &
22 Justice Building, Wenatchee, Washington.

23 APPEARANCES

24	FOR THE PETITIONERS:	Mr. Robert Maguire
25		Mr. Mark Braden
		Mr. Dale Foreman

1 FOR THE DEMOCRATIC Ms. Jenny Durkan
CENTRAL COMMITTEE: Mr. David Burman
2 Mr. Russell Speidel
3 FOR SECRETARY OF STATE: Mr. Tom Ahearne
4 Mr. Jeffrey Even
 Mr. Nick Handy
5 FOR KLICKITAT COUNTY: Mr. Tim O'Neill
6 FOR SNOHOMISH COUNTY: Mr. Gordon Sivley

7 * * *

8 (Oral Argument by Counsel)

9 THE COURT: All right, counsel, I'm going to give a
10 ruling on this motion and my ruling is going to be pretty
11 brief, not as long as some have been in the past. In this
12 particular instance the Washington State Democratic Central
13 Committee have filed a motion in limine to exclude the
14 petitioners' attribution of illegal votes, and I understand
15 after reading these materials, because it was not necessarily
16 a term that was familiar to me, that this attribution argument
17 has various names. It can be attribution. It's also called
18 proportional analysis, proportionate deduction. It's called
19 statistical analysis, and I think as one of the petitioners'
20 experts has referred to it as perhaps even ecological
21 inference.

22 At its most basic, the Court understands, the use of
23 this methodology would purportedly show that if the illegal
24 votes are apportioned between Mr. Rossi and Ms. Gregoire and
25 deducted from their totals, the result would show that Mr.

1 Rossi received more legal votes than Ms. Gregoire. The
2 intervenors in this case ask the Court, by motion in limine,
3 to exclude this evidence of statistical analysis and, in
4 essence, reject the theory. I'm not going to summarize the
5 arguments that have been made in support of and opposition to
6 this motion because we've heard those this morning. I will
7 say that the intervenors assert that such evidence is
8 inconsistent with the standard of proof required to invalidate
9 an election.

10 The Court concludes that neither specifically has our
11 state legislature, nor our courts established any guidelines
12 in this particular area. Decisions of courts from other
13 states to include, I would note, California and Idaho have
14 resulted in mixed opinions. Some favor the admission of such
15 evidence and some reject such evidence. Based on the review
16 of the statutes, the out-of-state cases, including Hill v.
17 Howell in our state, and the arguments that have been made
18 both orally and in writing to the Court, the Court's going to
19 deny the intervenor's motion in limine in this case to exclude
20 this evidence subject, of course, to a Frye hearing, if one is
21 requested.

22 However -- and this is an important however. The
23 denial of this motion should not be interpreted as a pretrial
24 ruling adopting the statistical analysis methodology, so
25 everyone understands that, and that's the ruling of the Court.

1 Any questions? The next motion the Court would like to take

2 up is whether crediting files are admissible.

3 (Oral Argument by Counsel)

4 THE COURT: This motion before the Court has been
5 brought by the intervenors and it is a motion in limine to
6 exclude evidence of what's called voter crediting and to
7 require the petitioners to introduce the so-called best
8 evidence of voting. And as we've heard and as I've read, the
9 intervenors here allege that the petitioners intend to rely on
10 so-called voter registration files to prove that the
11 individual illegal voters actually voted. One of our election
12 contest statutes is RCW 29A.68.110 dealing with illegal votes
13 and that statute provides that no election may be set aside on
14 account of illegal votes unless it appears that an amount of
15 illegal votes has been given to the person whose right is
16 being contested that, if taken from that person, would reduce
17 the number of the person's legal votes below the number of
18 votes given to some other person for the same office after
19 deducting therefrom the illegal votes that may be -- that may
20 be shown to have been given to the other person.

21 In response, the Court understands the petitioners here
22 to say that there are in excess, I think, of at least a
23 thousand votes cast by persons who were disqualified either
24 because they were felons who had not been re-enfranchised, by
25 persons who cast more than one vote or because ballots were

5

1 cast in the names of deceased persons. And I also understand
2 there is an argument that there are hundreds of provisional

3 ballots improperly put in tabulating machines without
4 verifying that the ballots were from lawfully registered
5 voters who had not already voted. Counsel have talked about
6 the statute and the statute actually is 29A.08.125 and the
7 petitioners argue that the voter crediting records are indeed
8 competent evidence of the fact that a person voted because
9 those records are required to be maintained by the auditor
10 pursuant to this particular statute and, indeed, that statute
11 does require the auditors to maintain these particular
12 records.

13 But although these records, I think, are certainly
14 admissible under our rules of evidence, the process of
15 crediting voters with having voted is a post-election
16 administrative exercise that this Court determines does not
17 bear upon the authenticity of election results and because of
18 that, the Court grants the intervenor's motion and, therefore,
19 the Court will require that any party, whether it be the
20 petitioners or the intervenors, who allege that there have
21 been illegal votes, they're going to be required to use the
22 poll book page signed by the voter or a provisional ballot
23 envelope signed by the voter which was submitted presumably at
24 the time or an absentee ballot envelope. Any questions,
25 counsel? Folks, let's take the morning recess for about 15

6

1 minutes and then we'll take up. I think we can finish these
2 motions this morning.

3 (Recess taken)

4
5 THE COURT: All right. There are actually two motions
6 before the Court. They are, if I can use the word, companion
7 motions. The first is the petitioners' motion to clarify the
8 burden of proof with respect to illegal votes, and the counter
9 motion brought by the intervenors is a motion in limine to
10 exclude evidence of petitioners' illegal convicted felon
11 voters. The Court understands, first, that the petitioners
12 intend to offer evidence of votes which were cast by felons
13 who were disqualified from voting under the Washington State
14 Constitution and that the argument is that upon a prima facie
15 showing by the petitioners that a voter is a felon and that
16 court records do not reflect any restoration of civil rights
17 that the respondents should be -- should bear the burden of
18 showing that the felon's civil rights have been restored
19 through either a certificate of discharge issued by the
20 felon's sentencing court or some other paperwork and that
21 absent such a showing by the respondents here, the
22 intervenors, that the Court should deem the felon's vote
23 illegal and invalid.

24 The companion motion filed by the intervenors is this,
25 that the intervenors assert in their motion in limine that the

7

1 Court should exclude all evidence of illegal felon voters
2 unless the petitioners can prove six elements. One, that the
3 -- that the vote was -- that the voter was convicted as an
4 adult, that the voter was convicted of a felony, that the

5 voter had not been given a deferred sentence, that the voter
6 had not been discharged pursuant to RCW 9.94A.637, that is,
7 not had their civil rights restored. Fifth, that the voter
8 cast a ballot in the 2004 general election and finally, number
9 six, that the voter marked the ballot to indicate a vote for a
10 gubernatorial candidate.

11 This, the Court recognizes, is an important decision,
12 as are all of these decisions we're dealing with today and as
13 well as those that have preceded today's hearing. And as the
14 Court was going through these motions and as I was lying in
15 bed last night, I had one of the fears that I think attorneys
16 have had often, I'm sure, did I miss something. Am I going to
17 get in court and realize that there is an issue that I just
18 completely overlooked. Mr. Foreman started out his
19 presentation a few minutes ago with the burden of proof
20 argument, that is, is it by a preponderance of the evidence or
21 is it clear, cogent and convincing evidence. And in
22 actuality, I hadn't anticipated specifically that that
23 argument was before the Court, based on the written materials
24 that the Court had been presented. I'll make a ruling. If
25 counsel wish, however, to readdress the issue, I invite

8

1 counsel to do that.

2 First with respect to the petitioners' motion here, the
3 Court's going to deny petitioners' motion and I do so for the
4 following reasons: Evidence of a felony conviction, coupled
5 with the absence of a certificate of discharge in a court

6 file, in this Court's mind does not establish a prima facie
7 case of illegal felon voting, and the Court concludes that
8 really based upon the reasoning provided by the Secretary of
9 State in their written materials.

10 Secondly, the burden of proof, this Court concludes,
11 rests with the party contesting the election and that burden
12 of proof does not shift. The reasons the burden of proof does
13 not shift is grounded in both our case law as well as our
14 statutes, and the Court, of course, as are counsel, we're all
15 mindful that the courts of this state presume the certified
16 results of an election to be valid unless the contrary is
17 clearly established. And unless an election is clearly
18 invalid, when the people have spoken their verdict should not
19 be disturbed by the courts.

20 Pursuant to RCW 29A.08.810, the registration of a
21 person as a voter is presumptive evidence of his or her right
22 to vote. And pursuant to RCW 29A.08.820, when a voter's
23 registration is challenged before an election, the burden of
24 proving that he or she is improperly registered rests with the
25 challenger and must be proved by clear and convincing

9

1 evidence. The same standard should apply when election
2 results are contested under 29A.68.020. Inasmuch as voting is
3 a constitutional right, no vote should be held illegal and
4 discounted absent clear proof that the voter was legally
5 disenfranchised.

6 Now as to the intervenor's motion in limine to exclude

7 evidence of petitioners' erroneously listed illegal convicted
8 felon voters, specifically the Washington State Democratic
9 Central Committee argues that the petitioners must show
10 evidence of the six elements that I've referenced to prove
11 that an illegal felon actually voted. The Court's decision
12 with respect to this motion in limine to exclude this evidence
13 is this. The Court's going to deny that motion and the Court
14 does so for the following reasons: First, our law instructs
15 that the Court should only grant a motion in limine if the
16 Court is able to determine that the evidence is clearly
17 inadmissible based on the issues. And here, the evidence
18 discussed in the intervenor's motion may be insufficient but
19 it is not clearly inadmissible.

20 Now, counsel, I recognize that you're asking for some
21 guidance from the Court so I'll offer the following to you.
22 To the extent that both the petitioners as well as the
23 intervenors seek clarification as to the evidence which must
24 be established to demonstrate that an illegal felon voted, the
25 Court instructs that the following elements should be

10

1 established to the extent that these elements can be
2 established. One, that the individual was convicted as an
3 adult and was not adjudicated as a juvenile. Number two, that
4 the individual was convicted of a felony, not a misdemeanor or
5 a gross misdemeanor. Number three, that the individual was
6 not given a deferred sentence. Number four, that the
7 individual has not had his or her civil rights restored in one

8 of the five ways described by the Secretary of State. Number
9 five, that the individual cast a ballot in the 2004 general
10 election and, number six, that they marked the ballot to
11 indicate a vote for a gubernatorial candidate.

12 Now, based on this Court's ruling with respect to voter
13 crediting, evidence that a particular person voted should be
14 based upon the poll books and the ballot envelopes. And with
15 respect to this last element, element number six, that there
16 should be evidence that an individual marked a ballot for a
17 gubernatorial candidate, the Court is mindful that it has not
18 precluded petitioners from introducing evidence of attribution
19 conditioned on a Frye hearing. And although these
20 determinations are obviously inconsistent and ultimately may
21 be mutually exclusive, whichever party intends to convince the
22 court that illegal felons voted should present all of the
23 evidence available, if any, as to element number six.

24 One of the cases that we have talked about for quite a
25 while now the last several months is Foulkes v. Hayes and in

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1 that case our Supreme Court talks about the inability to come
2 up with the smoking gun. I recognize that and it just may be
3 simply impossible to come up with all of these elements I've
4 referred to and particularly element number six. I'm simply
5 indicating you folks should come up with all that you have.

6 With respect to and responding to Mr. Foreman as to
7 simply what is the burden of proof, I'm going to say it's
8 clear and convincing. And I understand the Secretary of

9 State's argument. I'm mindful of the cases. I've read the
10 statutes and I think that is the appropriate burden but, Mr.
11 Foreman, if your folks disagree with that, I mean, I would
12 encourage specific briefing just as to that issue, but at this
13 time that's the Court's ruling.

14 Now, I want to go one step further, counsel, and this
15 is not by invitation necessarily but I think by necessity, and
16 I certainly don't intend to mischaracterize anybody's argument
17 here and specifically the petitioners' argument, but there is
18 a theme that I sometimes see as I read these materials and the
19 theme is this -- or the issue is this. May an election be
20 invalidated where the number of illegal votes exceed the
21 margin of victory, and I don't know if the petitioners intend
22 to pursue that simple issue because it's simple to state. But
23 I want to address it now so we can get it out of the way. And
24 so because it's the Court's impression that petitioners may
25 continue to argue that they do not have to prove which party

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1 was credited with an illegal vote, under some of our case law,
2 particularly Foulkes v. Hayes and Hill v. Howell, this is the
3 Court's reasoning.

4 While petitioners' arguments in this regard may be
5 persuasive, Washington's election contest statutes clearly
6 require the contestant to show illegal votes or misconduct
7 changed the election result based on RCW 29A.68.110 and .070.
8 And neither the Hill case nor the Foulkes case mentioned these
9 specific statutes and in both of those cases where fraud was

10 shown, the Court may set aside the election without requiring
11 proof that the result was changed. The contestants in Foulkes
12 did not allege illegal votes had been counted but, rather,
13 that properly cast ballots had been fraudulently altered. And
14 under these facts, our Supreme Court held the trial court had
15 correctly overturned the election without proof the result had
16 been affected.

17 similarly, in Hill the Court required proof illegal
18 votes changed the result, but in doing so remarked in somewhat
19 contradictory dicta that such a showing might not be required
20 where fraud, intimidation or a fundamental disregard of the
21 law had occurred. Also, there is an out-of-state case, the
22 Gooch case from Florida where the California court -- I'm
23 sorry, Florida. out of California. The California court
24 interpreted a statute almost identical to our 29A.68.110 to
25 not require proof the result was changed where a candidate's

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1 organization had engaged in large scale voter fraud. But in
2 our case here today, the petitioners have never alleged, to
3 the Court's knowledge, or even alluded to fraud or voter
4 intimidation. The only case where a Washington court did not
5 require proof of causation was Foulkes and that case involved
6 fraud.

7 The rule urged by petitioners may be a wise one and a
8 tempting choice for the Court. However, the Washington
9 legislature has, by enacting RCW 29A.68.110 and .070, removed
10 this choice from this Court's discretion. The statutory

11 command is clear and the Court should not invalidate the
12 election upon proof the number of illegal votes exceeded the
13 margin of victory. If the Supreme Court wishes to clarify
14 Hill's fundamental disregard exception to the causation
15 requirement, then they certainly, as we all know, will have
16 the opportunity to do that. Any questions, counsel, Mr.
17 Foreman, Ms. Durkan?

18 MR. FOREMAN: No, Your Honor.

19 MS. DURKAN: No, Your Honor.

20 THE COURT: Mr. Even?

21 MR. EVEN: No, Your Honor.

22 (Oral Argument by Counsel)

23 THE COURT: All right. The motion before the Court is
24 this. It's the petitioners' motion in limine to exclude
25 evidence concerning what are called previously rejected

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1 ballots and other offsetting errors and to clarify the limited
2 scope of the intervenor's evidence here. And as one might
3 imagine, as so often happens, from the time of the filing of
4 such a motion and the response, the focus changes somewhat and
5 it's the Court's perception that that has occurred here.

6 Originally the focus, I understand, of petitioners'
7 motion was to preclude, by motion in limine, the intervenors
8 from presenting evidence of what I would call signature
9 mismatches or rehabilitation of signatures or comparison of
10 each provisional ballot envelope signature to a voter
11 registration, but I understand that in response to that,

12 intervenors indicate that they do not intend to engage or
13 present evidence of signature mismatches or rehabilitation of
14 signatures or even comparison of provisional ballot or
15 absentee ballot envelopes with voter registrations. I'll take
16 them at their word.

17 Intervenors indicate here that they, however, do intend
18 to offer evidence of errors that deprived voters of their vote
19 where those folks who voted had timely submitted their ballots
20 and all requested information to the election officials and
21 they argue specifically that various election officials,
22 particularly in King County, I think, failed to compare
23 signatures and some rejected ballots because the officials
24 failed to include a copy of the signatures on their voter
25 registration database and could not find the voters' original

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1 registrations. Other instances, I think, the intervenors
2 discuss would be that the intervenors allege that other errors
3 occurred that may have led King County to reject provisional
4 ballots which actually should have been accepted if there had
5 simply been a signature comparison, and there are some other
6 arguments that are more particular to Eastern Washington.

7 The Secretary of State here argues this, and it really
8 is, in part, I think, in response to Mr. Maguire's argument
9 made this morning because the focus of the oral argument, I
10 think, is CR 24(c), that is, the intervenors are sandbagging.
11 And in response in their written materials, the Secretary of
12 State argues that the provisions of our election contest

13 statute require the effect of illegal votes and election
14 contest errors on both the winner and the runner-up be
15 considered in order to fully address which candidate received
16 the highest number of lawfully cast votes. And the Court
17 agrees with that proposition, in essence, and because the
18 Court agrees with that, the Court's going to deny the
19 petitioners' motion in this regard.

20 I think it has been fairly clear from the beginning
21 that the intervenors intended to present some evidence that
22 would offset some of the petitioners' evidence and although
23 the specifics of that may not have been known until recently,
24 I think that the spirit of our election contest statute has to
25 offset somewhat Civil Rule 26(c) and so the Court's going to

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1 rule this. The Court's going to deny the petitioners' motion,
2 but having denied the motion, the Court will make this
3 observation, that the definition of illegal votes and election
4 errors applies to any evidence that the intervenors may seek
5 to admit and if the petitioners believe at trial that such
6 evidence as intervenors may seek to admit is improper under
7 the election contest statute, then petitioners should
8 interpose an objection at that time. So, Mr. Maguire, any
9 questions about that?

10 MR. MAGUIRE: No, Your Honor, thank you.

11 THE COURT: Mr. Burman?

12 MR. BURMAN: No, Your Honor.

13 THE COURT: Mr. Even, any questions?

MR. EVEN: No, Your Honor.

(End of Court's Oral Decision)

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1 STATE OF WASHINGTON)
2 County of Chelan) ss

3 I, Luanne Nelson, a Certified Shorthand Reporter, and
4 official reporter for Chelan County Superior Court, do hereby
5 certify:

6 That the foregoing Verbatim Report of Proceedings was
7 reported at the time and place therein stated and thereafter
8 transcribed under my direction and that such transcription is
9 a true, complete and correct record of the proceedings.

10 I further certify that I am not interested in the
11 outcome of said action, nor connected with, nor related to any
12 of the parties in said action or their respective counsel.

13
14 _____
Official Court Reporter

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THE HONORABLE JOHN E. BRIDGES
Noted for Hearing
Monday, May 23, 2005, 8:30 a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

Timothy Borders et al.,

 Petitioners,

 v.

King County et al.,

 Respondents,

and

Washington State Democratic Central
Committee,

 Intervenor-Respondent.

NO. 05-2-00027-3

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE'S MOTION
TO CLARIFY THAT A "CONVICTED
FELONY RECORD" ALONE IS NOT
SUFFICIENT PROOF OF A FELONY
CONVICTION AND TO REQUIRE
BEST EVIDENCE OF A FELONY
CONVICTION

CONTENTS

I.	INTRODUCTION	1
II.	FACTS	1
A.	CFRs Do Not State Whether a Felony Conviction Has Occurred.	1
B.	Petitioners Intend to Rely Solely on CFRs to Prove a Felony Conviction Has Occurred for 200 People on Their List.	2
III.	ARGUMENT AND AUTHORITY	3
A.	This Court's Prior Rulings Support WSDCC's Position.	3
B.	A CFR Alone Cannot Satisfy Petitioners' Burden of Proof Because Database Printouts Listing Felony Convictions Do Not Meet Even the Preponderance of Evidence Standard to Prove a Prior Conviction.	4
C.	A CFR Cannot Satisfy Petitioners' Burden of Proof Because a CFR Does Not Even List Convictions or Whether Such Convictions Are Felonies.	5
D.	Petitioners Should Be Required to Use the Best Available Evidence to Prove Felony Convictions.	6
IV.	CONCLUSION	7

I. INTRODUCTION

Washington courts have ruled that reports of convictions from law enforcement databases alone are insufficient to prove a felony conviction has occurred under a preponderance of evidence standard. For 200 of the people on their alleged felon voter list, Petitioners rely solely on "Convicted Felon Records" ("CFRs") to prove a felony conviction – and those records *do not even report on convictions*. Instead, the CFRs list the crimes with which an individual was *charged*. But a charge is not a proof of conviction.

The CFRs do not list the crimes for which the individual was ultimately convicted, nor do CFRs list whether the ultimate conviction was for a felony or a misdemeanor. Petitioners have failed to make a showing sufficient to establish the existence of a felony conviction for those individuals, which is one of the elements this Court has previously ruled that Petitioners bear the burden of proving at trial, by clear and convincing evidence, on their claim of illegal votes under RCW 29A.68.020(5)(a)(ii). Accordingly, WSDCC asks the Court to clarify that any party seeking to prove an illegal vote by a convicted felon whose civil rights have not been restored may not rely solely on a CFR to establish a felony conviction, but must present the best available evidence: the Judgment and Sentence issued by the convicting court.

II. FACTS

A. CFRs Do Not State Whether a Felony Conviction Has Occurred.

CFRs include two categories of information: (1) "Personal Identification" and (2) "Charge Information." *See* Declaration of William C. Rava in Support of WSDCC's Motion to Clarify ("Rava Decl.") Ex. A. The Personal Identification section includes an individual state identification number; the person's name, birth date, age at completion,

1 gender, race, and address; the case number; "case resolution" (whether the case was resolved
2 by a guilty plea or trial); and "case completion" (the date the judgment was filed). The
3 Charge Information section includes the crimes charged by statute reference, title, date the
4 information was filed, and severity. Nowhere on the CFR is the crime for which the person
5 was convicted listed, nor does the CFR include information regarding whether the
6 conviction was for a felony or a misdemeanor. *Id.* In contrast, a Judgment entered by a
7 court contains both the crime of conviction and the severity of conviction. *See, e.g., id.*
8 Ex. B. Judgments are readily available through Washington's county courts. *See id.* ¶ 3.

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17 **B. Petitioners Intend to Rely Solely on CFRs to Prove a Felony Conviction**
18 **Has Occurred for 200 People on Their List.**

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20 For 200 of the individuals on Petitioners' final list of allegedly illegal felon voters,
21 the only proof that Petitioners have produced that these individuals were actually convicted
22 of a felony are CFRs. *See* Rava Decl. ¶ 4, Ex. C. WSDCC learned for the first time this
23 week that Petitioners believe that a CFR alone is sufficient proof that a person was actually
24 convicted of a felony. *Id.* ¶¶ 5-6, Ex. D. As support for Petitioners' position, they assert that
25 the CFRs "are reports generated by the Superior Court showing the date & nature of
26 convictions." *Id.* That is flat wrong. Instead, as explained above, the CFRs show the date
27 on which the judgment was filed and the crime with which the person was *charged*, but *not*
28 the crime of which the person was convicted. In contrast to Petitioners' reliance on CFRs,
29 WSDCC has collected from county court files around the State, copies of the judgment of
30 conviction for every individual on WSDCC's list of illegal felon voters. *Id.* ¶ 3. Of course,
31 these documents are public records and were equally available for Petitioners during the four
32 months since they filed this election contest.
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III. ARGUMENT AND AUTHORITY

A. This Court's Prior Rulings Support WSDCC's Position.

On May 2, 2005, this Court ruled that any party asserting illegal votes by a convicted felon whose civil rights have not been restored must establish six elements in order to prove an "illegal vote" under RCW 29A.68.020(5)(a)(ii). The elements relevant to this motion are as follows:

One, that the individual was convicted as an adult and was not adjudicated as juvenile. Number two, that the individual was convicted of a felony, not a misdemeanor or gross misdemeanor. . . . Number five, that the individual cast a ballot in the 2004 general election.

Rava Decl., Ex. E (Verbatim Report of Proceedings at 9). The Court further ruled that "the burden of proof . . . rests with the party contesting the election and that burden of proof does not shift." *Id.* at 8. In other words, Petitioners bear the burden of proving that each individual on their list of illegal felon voters was actually convicted of a felony as an adult. And the burden that they bear is the highest standard available in the civil context: clear and convincing evidence. *Id.* As the Court explained on May 2:

[T]he courts of this state presume the certified results of an election to be valid unless the contrary is clearly established. And unless an election is clearly invalid, when the people have spoken their verdict should not be disturbed by the courts.

Pursuant to RCW 29A.08.810, the registration of a person as a voter is presumptive evidence of his or her right to vote. And pursuant to RCW 29A.08.820, when a voter's registration is challenged before an election, the burden of proving that he or she is improperly registered rests with the challenger and must be proved by *clear and convincing evidence. The same standard should apply when election results are contested under 29A.68.020. In as much as voting is a constitutional right, no vote should be held illegal and discounted absent clear proof that the voter was legally disenfranchised.*

Id. (emphasis added).

1 Finally, the Court's ruling regarding the type of evidence necessary to prove that an
2 individual actually voted is relevant to the type of evidence necessary to prove whether a
3 person has actually been convicted of a felony. As to proof of voting, the Court required the
4 best evidence available: "the poll book page signed by the voter or a provisional ballot
5 envelope signed by the voter . . . or an absentee ballot envelope." *Id.* at 5. The Court
6 rejected Petitioners' attempt to rely on secondary sources of evidence of voting (the voter
7 crediting files) given the availability of the primary and best evidence of the fifth element on
8 which Petitioners bear the burden of proof in this case (that the allegedly illegal voter
9 actually cast a ballot in the 2004 general election).

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19 **B. A CFR Alone Cannot Satisfy Petitioners' Burden of Proof Because**
20 **Database Printouts Listing Felony Convictions Do Not Meet Even the**
21 **Preponderance of Evidence Standard to Prove a Prior Conviction.**
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23 Washington courts have addressed the issue of what is sufficient proof of a prior
24 felony conviction in the context of establishing a defendant's criminal history for sentencing
25 purposes. *State v. McCorkle*, 88 Wn. App. 485, 492 (1997), *aff'd* 137 Wn.2d 490 (1999). In
26 this context, "the State must prove the existence of prior convictions by a preponderance of
27 the evidence." *Id.* The courts have clearly concluded that the "*best evidence of a prior*
28 *conviction is a certified copy of a judgment.*" *Id.* at 493 (emphasis added). A printout of a
29 law enforcement database which lists prior felony convictions, when used alone, is
30 insufficient proof of an individual's criminal history to meet even a preponderance of
31 evidence standard. *See State v. Gill*, 103 Wn. App. 435, 448-450 (2000) (reversing lower
32 court decision that FBI "rap sheet" listing all prior convictions was, alone, sufficient proof of
33 past criminal convictions because the "State failed to establish minimally reliable facts upon
34 which to make a decision"); *State v. McCorkle*, 88 Wn. App. at 493 (1997) (noting that FBI
35 rap sheet listing prior convictions may be considered only "in conjunction with other
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1 evidence"). In *Gill*, the defendant prevailed on the same argument that WSDCC is making
2 here: a felony conviction must be proved by a "copy of the judgments and sentence. It can't
3 just be a computer printout." *Gill*, 103 Wn. App. at 448.
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6 Such database printouts may only be relied upon if presented in conjunction with
7 other documents of record or transcripts of prior proceedings that are comparable to a
8 judgment of conviction. *See Gill*, 103 Wn. App. at 448; *State v. Reinhart*, 77 Wn.App. 454,
9 456 (1995) (reliance upon an unsigned certified copy of a judgment, a presentence report,
10 and a penitentiary record showing the sentences and terms of parole, along with an FBI rap
11 sheet listing prior convictions was sufficient to show that a prior conviction had occurred
12 under a preponderance of evidence standard).
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21 **C. A CFR Cannot Satisfy Petitioners' Burden of Proof Because a CFR Does**
22 **Not Even List Convictions or Whether Such Convictions Are Felonies.**
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24 Unlike a rap sheet listing prior convictions, the CFRs include no record of what an
25 individual was convicted of, nor do CFRs list whether a conviction was for a felony or a
26 misdemeanor. *See Rava Decl. Ex. A.* Petitioners are simply wrong in asserting that the
27 CFRs "show[] the date & nature of convictions." *Certainly if a database from the Federal*
28 *Bureau of Investigation listing an individual's prior convictions is insufficient proof of a*
29 *prior conviction to meet a preponderance of evidence standard, a database listing of*
30 *crimes with which a person was charged cannot be sufficient proof of a prior conviction*
31 *to meet the clear and convincing standard applicable in this case.* The Court should
32 clarify that a CFR alone does not satisfy Petitioners' burden of proof on one of the essential
33 elements to their claim of illegal votes by convicted felons – proof that each such person
34 was actually convicted of a felony.
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1 **D. Petitioners Should Be Required to Use the Best Available Evidence to**
2 **Prove Felony Convictions.**
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4 "It is a general demand of the law that the best possible evidence be produced."
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6 *Larson v. A.W. Larson Const. Co.*, 36 Wn.2d 271, 279 (1950); *see also Eagle Group, Inc. v.*
7 *Pullen*, 114 Wn. App. 409 (2002) (must use "best available" evidence to show lost profits);
8 *Minor v. United States*, 375 F.2d 170, 181 (8th Cir. 1967) ("It is the established rule that the
9 best evidence extant and obtainable must be used in a trial, and that secondary evidence of a
10 fact may not be offered so long as primary evidence is extant and obtainable.").¹
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16 Washington courts have unequivocally ruled that "[t]he best evidence of a prior
17 conviction is a certified copy of the judgment." *Gill*, 103 Wn. App. at 448; *McCorkle*, 88
18 Wn. App. at 493. Certified copies of judgments for felony convictions are readily available
19 from Washington's county courts. *See Rava Decl.* ¶ 3. Petitioners have apparently failed to
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26 ¹ The rationale underlying those decisions and the codified "best evidence rule"
27 supports the exclusion of the CFRs:
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30 Underlying the rule are the presumptions that impugn the motive of a
31 party who withholds primary evidence and attempts to substitute
32 therefor evidence of an inferior grade, the innocent, sometimes
33 sinister, fallibility and inaccuracy of human understanding and
34 memory – particularly that of persons interested in the result – and the
35 possibility, often strong probability, of error in copies of documents
36 which may be of the highest importance in the litigation.
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39 *State v. Modesky*, 15 Wn. App. 198, 203-04 (1976). The best evidence argument is
40 particularly strong here given that Petitioners must prove that the election was "clearly
41 invalid." *Dumas v. Gagner*, 137 Wn.2d 267, 283 (1999). To satisfy this burden, Petitioners
42 should be required to produce the best evidence available to them – certified copies of
43 judgments.
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1 obtain those documents. Instead, they have chosen to rely on the CFRs which are, at best,
2 secondary evidence that an individual was charged with a felony. Apparently, Petitioners
3 may also attempt to rely on other secondary databases that might or might not reflect on a
4 person's conviction status and the severity of the convicted crime (such as court dockets).
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9 *Id.* ¶ 7. Petitioners cannot rely on this faulty secondary evidence. *See Pneumo Abex Corp.*
10 *v. Bessemer and Lake Erie R. Co., Inc.*, 936 F. Supp. 1250, 1258-59 (E.D. Va. 1996)
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12 (rejecting a compilation of records because it did not fairly represent the underlying
13 records).
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16 Because the primary evidence of a certified copy of a judgment is available and the
17 CFRs do not show whether an individual was convicted of a felony, the Court should require
18 Petitioners to produce certified copies of the judgments for each person they allege to be a
19 convicted felon who cast an illegal vote.
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25 IV. CONCLUSION

26 The Court should clarify before trial begins that a CFR alone is insufficient proof
27 that a person was actually convicted of a felony. The Court should require Petitioners to
28 introduce the best evidence available of a felony conviction: the judgment of conviction
29 from the court files.
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1 DATED: May 18, 2005.
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4 **PERKINS COIE LLP**

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